

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<https://oversight.house.gov>

October 19, 2023

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Mayorkas:

The Committee on Oversight and Accountability continues to investigate the Biden Administration's handling of the worst border crisis in history. On his first day in office, President Biden issued a proclamation halting construction of the border barrier system, calling it "a waste of money that diverts attention from genuine threats to our homeland security."¹ As recently as this summer, the Administration was engaged in a sell-off of materials procured by the government to build border barriers.² In the Federal Register, you recently conceded that there is "an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States..."³ However, conflicting statements by both you and the White House have obfuscated the Administration's position on utilizing border barriers for the purpose of securing the border.

On October 5, 2023, you published in the Federal Register a notice of your determination that "[t]here is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended]."⁴ This was done pursuant to authority in law for the Secretary of Homeland Security to exercise sole discretion to waive the

¹ Proclamation by the President, *Emergency With Respect to the Southern Border of the United States And Redirection of Funds Diverted to Border Wall Construction* (Jan. 20, 2021) available at www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/.

² See Letter from James Comer, Chairman, House Committee on Oversight and Accountability to Lieutenant General Scott A. Spellmon, Commanding General, U.S. Army Corps of Engineers (Sept. 12, 2023), available at <https://oversight.house.gov/wp-content/uploads/2023/09/USACE-Doc-Request-on-Border-Barrier-System-Sell-Off.pdf>; see also McGrath Goodman, Leah, *Exclusive: Pentagon Sells Off Trump Border Wall*, THE DAILY UPSIDE (Aug. 11, 2023).

³ Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended, 88 Fed. Reg. 69214 (Oct. 5, 2023) available at <https://www.govinfo.gov/content/pkg/FR-2023-10-05/pdf/2023-22176.pdf>.

⁴ *Id.*

applicability of legal requirements determined “necessary to ensure the expeditious construction of barriers and roads...”⁵

Your determination asserted that the U.S. Border Patrol’s “Rio Grande Valley Sector is an area of ‘high illegal entry[.]’” and notes that there were over 245,000 encounters of illegal entrants in the Rio Grande Valley Sector between ports of entry in Fiscal Year 2023.⁶ The intended border barrier projects are located in Starr County, Texas.⁷ This action to waive legal impediments to constructing border barriers comes as Border Patrol encounters of illegal entries in between ports of entry across the entire southwest border exceeded two million in Fiscal Year 2023 under your leadership, only the second time this has ever occurred in U.S. history, with the first—Fiscal Year 2022—also occurring under your tenure.⁸

On its face, your words concede a seemingly obvious point: that border barriers are an essential part of securing the border, as they have “proved to be a critical component in gaining operational control of the border” by diverting or slowing illegal crossings of people or contraband, and result in a significant and measurable decrease in illegal entry in the areas they are erected while requiring less manpower to patrol.⁹ Yet Administration officials continue to assert that this action does not constitute a change in policy and that border barriers are ineffective. You even issued a statement asserting that your words published in the Federal Register had been taken out of context.

The decision to resume border barrier construction contradicts President Biden’s campaign assertion in August of 2020 that “[t]here will not be another foot of wall constructed on my administration...”¹⁰ It also appears to contradict current Administration policy. President Biden insisted on October 5, 2023 that “[n]othing” had changed and when asked if he believed the border wall works, he replied, simply, “No.”¹¹ The White House Press Secretary reiterated his remarks that same day: “We believe that a border wall is not effective. You heard that from the President when your colleague, Selina, asked him directly. He said we don’t believe it’s effective.” She declined to comment on the Federal Register notice you issued in which you asserted that there was “an acute and immediate need” to build the barrier system to “prevent

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Camilo Montoya-Galvez, *Unlawful crossings along southern border reach yearly high as U.S. struggles to contain mass migration*, CBS NEWS (Oct. 1, 2023); see also Newsroom, *Southwest Land Border Encounters*, U.S. CUSTOMS AND BORDER PROTECTION, available at <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (accessed October 6, 2023).

⁹ Press Release, DHS, *The Border Wall System is Deployed, Effective, and Disrupting Criminals and Smugglers*, Oct. 29, 2020, available at <https://www.dhs.gov/news/2020/10/29/border-wall-system-deployed-effective-and-disrupting-criminals-and-smugglers#:~:text=CBP%20has%20seen%2079%25%20decrease,wall%20system%20in%20this%20area>.

¹⁰ Barbara Sprunt, *Biden Would End Border Wall Construction, But Wouldn’t Tear Down Trump’s Additions*, NPR (Aug. 5, 2020).

¹¹ *Remarks by President Biden Before National Security Team Briefing on Ukraine*, THE WHITE HOUSE (Oct. 5, 2023), available at <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/10/05/remarks-by-president-biden-before-national-security-team-briefing-on-ukraine/>.

unlawful entries into the United States in the project areas...”¹² Later that same day, you issued a statement asserting that your words in the Federal Register were “being taken out of context” and that the action to build barriers in the Rio Grande Valley Sector “does not signify any change in policy whatsoever.”¹³

To assist the Committee in conducting oversight of DHS’s efforts to reduce illegal entries in between ports of entry, including by the appropriate use of border barriers, please provide the following documents and information, covering the time period January 20, 2021 to the present unless otherwise indicated, as soon as possible but not later than November 2, 2023:

1. All documents and communications associated with the decision to construct border barriers in the Rio Grande Valley sector, including but not limited to any related communications between DHS officials and the White House;
2. All documents and communications related to the October 5, 2023 notice of determination referenced above and published in the Federal Register, including but not limited to any related communications between DHS officials and the White House;
3. All documents and communications related to the October 5, 2023 *Statement from Secretary Mayorkas on Recent News Reports* referenced above, including but not limited to any related communications between DHS officials and the White House;
4. All documents and communications related to the accounting of funds appropriated to DHS for the “construction of barrier system along the southwest border” including funds obligated, where and how they were obligated, and what appropriated money remains to be obligated.

To arrange for the delivery of responsive documents or ask any related follow-up questions, please contact Committee on Oversight and Accountability Majority Staff at (202) 225-5074. Attached are instructions for producing the documents and information to the Committee.

The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

¹² *Press Briefing by Press Secretary Karine Jean-Pierre*, THE WHITE HOUSE (Oct. 5, 2023), available at <https://www.whitehouse.gov/briefing-room/press-briefings/2023/10/05/press-briefing-by-press-secretary-karine-jean-pierre-50/>.

¹³ Press Release: *Statement from Secretary Mayorkas on Recent News Reports*, DEP’T OF HOMELAND SECURITY (Oct. 5, 2023), available at <https://www.dhs.gov/news/2023/10/05/statement-secretary-mayorkas-recent-news-reports>.

The Honorable Alejandro Mayorkas

October 19, 2023

Page 4 of 6

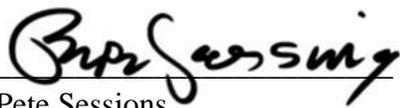
Sincerely,



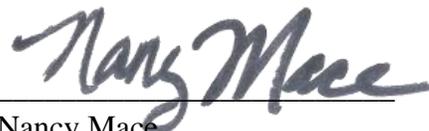
James Comer
Chairman
Committee on Oversight and Accountability



Glenn Grothman
Chairman
Subcommittee on National Security,
the Border, and Foreign Affairs



Pete Sessions
Chairman
Subcommittee on Government Operations
and the Federal Workforce



Nancy Mace
Chairwoman
Subcommittee on Cybersecurity,
Information Technology, and
Government Innovation



Pat Fallon
Chairman
Subcommittee on Economic Growth,
Energy Policy, and
Regulatory Affairs



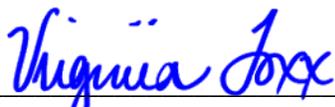
Lisa McClain
Chairwoman
Subcommittee on Health Care and
Financial Services



Michael R. Turner
Member of Congress



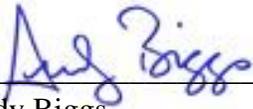
Paul A. Gosar, D.D.S.
Member of Congress



Virginia Foxx
Member of Congress



Clay Higgins
Member of Congress



Andy Biggs
Member of Congress



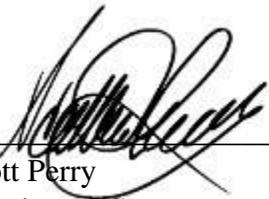
Jake LaTurner
Member of Congress



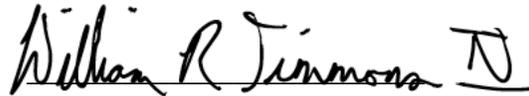
Byron Donalds
Member of Congress



Kelly Armstrong
Member of Congress



Scott Perry
Member of Congress



William R. Timmons, IV
Member of Congress



Tim Burchett
Member of Congress



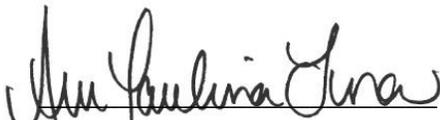
Marjorie Taylor Greene
Member of Congress



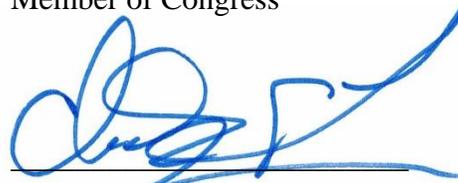
Lauren Boebert
Member of Congress



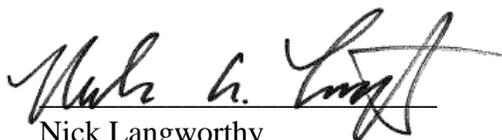
Russell Fry
Member of Congress



Anna Paulina Luna
Member of Congress



Chuck Edwards
Member of Congress



Nick Langworthy
Member of Congress



Eric Burlison
Member of Congress

The Honorable Alejandro Mayorkas

October 19, 2023

Page 6 of 6

cc: The Honorable Jamie B. Raskin, Ranking Member
Committee on Oversight and Accountability

The Honorable Robert Garcia, Ranking Member
Subcommittee on National Security, the Border, and Foreign Affairs

The Honorable Kweisi Mfume, Ranking Member
Subcommittee on Government Operations and the Federal Workforce

The Honorable Gerald Connolly, Ranking Member
Subcommittee on Cybersecurity, Information Technology, and Government Innovation

The Honorable Cori Bush, Rankin Member
Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs

The Honorable Katie Porter, Ranking Member
Subcommittee on Health Care and Financial Services